LEXSEE 2003 U.S. DIST. LEXIS 2365

JIM RAE, SHARLYN MELLER and CORPORATE MARKETING, INC., Plaintiffs, v. GREGORY G. MEIER, MEIER, MORGAN, HATLEY & STOCK, ROCHELLE MORGAN, JERRY F. HATLEY, and SUSAN H. STOCK, Defendants.

No. 02-2329

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE, WESTERN DIVISION

2003 U.S. Dist. LEXIS 2365

February 19, 2003, Decided

DISPOSITION: [*1] Defendants' motion to dismiss denied.

COUNSEL: For JIM RAE, SHARLYN MELLER, CORPORATE MARKETING, INC., plaintiffs: Anthony Charles Pietrangelo, Esq., John J. Cook, Esq., PIETRANGELO COOK, Memphis, TN.

For GREGORY G. MEIER, MEIRE, MORGAN, HATLEY & STOCK, ROECHELLE MORGAN, JERRY F. HATLEY, SUSAN H. STOCK, defendants: Michael G. Derrick, Esq., James E. King, Jr., SHUTTLEWORTH WILLIAMS HARPER WARING & DERRICK, Memphis, Tn.

KENNY W. ARMSTRONG, miscellaneous, Pro se, Memphis, TN.

JUDGES: BERNICE BOUIE DONALD, UNITED STATE DISTRICT JUDGE.

OPINION BY: BERNICE BOUIE DONALD

OPINION:

ORDER DENYING DEFENDANTS' MOTION TO DISMISS

This matter is before the Court on the motion of Defendants Gregory G. Meier ("Meier"), Rochelle Morgan, Jerry F. Hatley, Susan H. Stock, and the law firm of Meier, Morgan, Hatley & Stock ("Meier firm") to dismiss Plaintiffs Jim Rae, Sharlyn Meller, and Corporate Marketing, Inc.'s complaint pursuant to Federal Rule of Civil Procedure 12(b)(2). Defendants aver that Plaintiffs failed to sufficiently plead that the Court has personal jurisdiction over Defendants because Meier, the agent acting on behalf of Defendants, was only present in Tennessee a single time. Plaintiffs assert [*2] that personal jurisdiction over Meier exists because physical presence in the jurisdiction is not required to establish in personam jurisdiction where a defendant shares an ongoing contractual relationship with a plaintiff within a court's jurisdiction. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332. For the following reasons, Defendants' motion is **DENIED.**

I. Factual Background

For purposes of the instant motion only, the court accepts the following facts as true. In 1994, Plaintiffs commenced a lawsuit in the District Court of Tulsa County, Oklahoma styled Abney, et al. v. Service Network, et al. ("ServiceMaster Litigation"). Compl. at P 7. Dissatisfied with the lawyer initially hired to represent their interests in the ServiceMaster Litigation, Plaintiffs replaced their original counsel with the Meier firm through negotiations with Meier in December 2000. Compl. at P 8. The ServiceMaster litigation concluded in a mediated settlement. Compl. at P 13. However, the issue of fee splitting between Plaintiffs' first counsel and Meier remained unresolved. Id. During a three-way telephone call between Meier in Oklahoma, [*3] Rae in Tennessee and Meller in Wisconsin, Meier asked Rae and Meller to assist him in the resolution of the fee dispute.

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Compl. at P 14. Unable to come to an agreement during that conversation, Meier, Rae and Meller negotiated and communicated via facsimile, telephone and electronic mail to determine the nature of their work relationship. Mem. in Supp. of the Mot. for Dismiss. for Defs. at p. 4. Ultimately, Rae and Meller agreed to work with Meier only if he paid them a $ 10,000 expert witness fee for their pretrial work and testimony at deposition and/ or trial in the fee dispute. Compl. at P 16. Rae, Meller and Meier also agreed that Rae and Meller would draft and backdate a contract reflecting Meier's agreement to pay Rae and Meller an additional $ 80,000 upon the conclusion of the fee dispute. Id.

Rae and Meller drafted the contract and backdated it in accordance with the parties' agreement. Compl. at P 17. In the contract, Rae and Meller agreed to provide the following services: "meeting and presentation design and preparation; research and classification of case materials and documents; preparation of documents, exhibits and letters; preparation of all trial materials, depositions, [*4] audios and videos, participation in meetings as appropriate; and, general consulting as needed ...." Compl. at Ex. C, p. 1. The fee for these services was $ 1700 per day for an estimated 50 days. Compl. at Ex. C, p.2. Meier reviewed the contract with his attorney and signed it. Id. Rae and Meller performed their end of the contract by "coordinating, synthesizing and analyzing extensive litigation documents and information as requested by Meier; preparing written materials for use by Meier, and consulting with Meier regarding strategy and alleged deficiencies and malpractice by [Plaintiffs' original counsel]." Compl. at P 18. Rae and Meller conducted these activities at Rae's home in Cordova, Tennessee, which the parties designated as the "base of operations for the performance of the contracts." Compl. at P6. The parties agreed to make Rae's home the base of operations because they knew that Rae and Meller's depositions would be taken in Memphis, Tennessee, and because there was a need for a place to store numerous documents that had been accumulated during the ServiceMaster litigation. Aff. of Jim Rae at P 8; Aff. of Sharlyn Meller at P 8.

While preparing for the fee dispute [*5] trial, Meier communicated with Rae and Meller via telephone and facsimile. Mem. of Def. at p.4. Virtually all of the telephone calls and facsimiles sent to Meier from Rae and Meller originated from Rae's home office in Cordova, Tennessee. Pls. Mem. in Opp'n to Defs.' Mot. to Dismiss at p.4. Meier made calls and sent electronic mail from Oklahoma to Tennessee discussing performance of the contract. Rae Aff. at P 8; Meller Aff. at P 8. In addition, Meier came to Tennessee to attend both Rae and Meller's depositions which were taken in Memphis. Mem. of Defs. at p. 4. While he was in Tennessee, Meier also strategized with Rae and Meller regarding the fee dispute trial and personally delivered partial payment for performance of the expert witness contract in the amount of $ 10,000 to Rae at his home in Cordova. Pl. Mem. at p. 4.

II. Legal Standard

Federal Rule of Civil Procedure 12(b)(2) permits dismissal of a claim for lack of jurisdiction over the person. In considering a motion to dismiss, "the court must construe the complaint in a light most favorable to the plaintiff, and accept all of [the] factual allegations as true." Bird v. Parsons, 289 F.3d 865, 871 (6th Cir. 2002) [*6] (quoting Jackson v. City of Columbus, 194 F.3d 737, 745 (6th Cir. 2002)). Absent an evidentiary hearing on the issue of personal jurisdiction, the plaintiff "need only make a prima facie showing of jurisdiction." Id. (quoting Neogen Corp. v. Neo Gen Screening, Inc., 282 F.3d 883, 887 (6th Cir. 2002)). A prima facie showing of jurisdiction may be established based upon the plaintiff's pleadings and affidavits. Bridgeport Music, Inc. v. Agarita Music, Inc., 182 F. Supp. 2d 653, 657 (M.D. Tenn. 2002).

III. Analysis

Defendants argue that insufficient contacts exist with the forum state to allow the Court to exercise personal jurisdiction over Defendants because Meier only entered Tennessee one time. The Court finds this argument without merit. When analyzing whether a court has personal jurisdiction over a defendant in a diversity action, it is "well-settled" that the court applies the jurisdictional law of the forum state. Poyner v. Erma Werke GMBH, 618 F.2d 1186, 1187 (6th Cir. 1980). Accordingly, the Court looks to Tennessee law to determine if the Court has personal jurisdiction over Meier. The Tennessee [*7] long arm statute reads:

> (a) Persons who are nonresidents of Tennessee ... and cannot be personally served with process within the state are

> subject to the jurisdiction of the court of this state as to any action or claim for relief arising from: ... (5) Entering into a contract for services to be rendered or for materials to be furnished in this state."

Tenn. Code Ann. § 20-2-214(a)(5). Although this statute reaches broadly, it must be applied in a manner that comports with the due process clause of the Fourteenth Amendment. Id.; Reynolds v. Int'l Amateur Athletic Fed'n, 23 F.3d 1110, 1115 (6th Cir. 1994), cert. denied, 513 U.S. 962, 115 S. Ct. 423, 130 L. Ed. 2d 338 (1994); Proctor & Gamble Cellulose Co. v. Viskoza-Loznica, 33 F. Supp. 2d 644, 660 (W.D. Tenn. 1998).

Before a defendant can be subjected to in personam jurisdiction, due process requires a defendant to have had "minimum contacts with [the state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" Poyner, 618 F.2d at 1190 (citing Int'l Shoe Co. v. Washington, 326 U.S. 310, 316, 90 L. Ed. 95, 66 S. Ct. 154 (1945)). [*8] Particularly relevant to this case, the Tennessee Supreme Court has held that "the physical presence of the defendant or its agent is 'not necessary' for the transaction of business to serve as a minimum contact." Nicholstone Book Bindery, Inc. v. Chelsea House Publ'ers, 621 S.W.2d 560, 563 (1980) (citing S. Mach. Co., Inc. v. Mohasco Indus., Inc., 401 F.2d 374, 382 (6th Cir. 1968)). Instead, the "crucial factor" in determining whether a defendant may be subjected to personal jurisdiction is whether its contacts indicate that the defendant "purposefully availed itself of the privilege of carrying on activities to secure goods from a manufacturer and seller located within the state." Id.

In Nicholstone, the Tennessee Supreme Court found that even a defendant that had no physical contact with Tennessee could be subjected to personal jurisdiction in the State's courts. In that case, the parties met at a trade meeting in Atlanta, Georgia where they discussed establishing a business relationship. 621 S.W.2d at 561. The defendant later sent a purchase order from its office in New York to plaintiff's office in Tennessee. Id. Subsequently, the particulars [*9] of the purchase order were negotiated via telephone and mail communications and a contract was formed. Id. Plaintiffs undertook several customized actions in order to fill defendant's purchase order. Id. Plaintiff also sent a salesman to New York to discuss details of the transaction. 621 S.W.2d at 563.

The Court rejected defendant's arguments that because 1) defendant did not actively solicit plaintiff's services; 2) the contract was executed in a foreign state; and 3) defendant had never been present in Tennessee, a Tennessee court could not exercise personal jurisdiction over defendant. Id. To the contrary, the Court found that because 1) defendant made a purposeful choice to enter into a business relationship with a Tennessee resident; 2) the business relationship was mutually beneficial to both parties; 3) the business relationship began as a result of a purchase order sent from defendant in New York to plaintiff in Tennessee; and 4) the contract "provided for a customized product including the manufacture of specialized goods," it was foreseeable that economic consequences would arise in Tennessee out of the business transaction. 621 S.W.2d at 563-564. Accordingly, the [*10] Court held that exercising personal jurisdiction over the New York defendant was proper. 621 S.W.2d at 566.

The facts of the case sub judice are substantially similar to those in Nicholstone. The relationship between Rae, Meller and Meier arose out of Meier requesting Rae and Meller's assistance during the fee dispute trial. The parties negotiated via telephone and electronic mail and signed a contract wherein Meier agreed to pay Rae and Meller for their consulting services. Throughout the course of their relationship, the parties continued to communicate via telephone, facsimile and electronic mail. The work performed by Rae and Meller was specific to the fee splitting dispute and could not be generally applied to other legal practice. Most of the communications from Rae and Meller to Meier were sent from Rae's home in Cordova, Tennessee. Rae's home in Tennessee was the "base of operations," where all of Rae and Meller's consulting work was performed. Meier also met with Rae and Meller in Memphis, Tennessee where he 1) made partial payment for services rendered pursuant to the contract; 2) attended and participated in Rae and Meller's depositions; and 3) strategized with Rae [*11] and Meller regarding the fee dispute trial. Under Nicholstone, the Court finds these contacts sufficient for the Court to constitutionally exercise personal jurisdiction over Defendants. Accordingly, the Court **DENIES** Defendants' motion to dismiss.

IV. Conclusion

For the foregoing reasons, Defendants' motion to dismiss is **DENIED.**

IT IS SO ORDERED this 19 day of February, 2003

BERNICE BOUIE DONALD

UNITED STATE DISTRICT JUDGE